



IAC-AH-DP-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/07438/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 9th October 2015**

**Decision & Reasons Promulgated
On 23rd October 2015**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ZAHIDA PARVEEN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Mills

For the Respondent: Ms Rutherford

DECISION AND REASONS

1. This appeal to the Upper Tribunal is brought by the Secretary of State for the Home Department against a determination of the First-tier Tribunal (Judge Hawden-Beal) promulgated on 12th March 2015, in which she allowed Zahida Parveen's appeal against the refusal of an Entry Clearance Officer to issue a Certificate of Entitlement to the Right of Abode under Section 2(1)(a) of the Immigration Act 1971 and the Immigration "Certificate of Entitlement to the Right of Abode in the United Kingdom) Regulations 2006 as amended. I shall, hereinafter, refer to the Appellant as "the Secretary of State" and the Respondent as "the Claimant".

2. It was the Claimant's case that she had been born, in the UK, on 9th December 1969. She said that her parents were Adalat Khan (father) and Sabre Bi (mother), who were both nationals of Pakistan. The nub of her claim was that she had been born in the UK on a date prior to January 1983.
3. It is fair to say that there were some complications with the evidence. There were documents which had different spellings of the Claimant's name, there were two Pakistani passports issued in her name, one indicating her birth place as being Mirpur AK and one indicating it as being Bradford. DNA testing had confirmed that her mother is Sabre Bi but had not confirmed her father as being Adalat Khan. The judge heard some oral evidence concerning the identity of Sahida Parveen. It was the Secretary of State's case that she was not the person named in a birth certificate as having been born in Bradford and that she had not shown she had been born in the UK at all.
4. Judge Hawden-Beal, having heard the oral evidence, having considered the documentary evidence and having been addressed by representatives for both parties, allowed the appeal for reasons which are set out in her determination. At paragraph 5 of that determination she stated, correctly, that in immigration appeals, the burden of proof lies upon the Appellant and that the standard is that of a balance of probabilities. She said the same thing at paragraph 35 of the determination but, at paragraph 36, the final paragraph of the determination, stated that "to the lower standard of proof" she was satisfied that Zahida Parveen had been born in Bradford on 9th December 1969 and was, in consequence, a British citizen such that the Certificate of Entitlement to the Right of Abode which she had sought ought to have been issued to her.
5. The Secretary of State applied for permission to appeal to the Upper Tribunal. The first ground was to the effect that the judge had misdirected herself as to the standard of proof. That was said to be of particular importance because the question of credibility "was paramount". It was also contended that the judge had speculated with respect to a number of favourable findings from the Claimant's perspective and that she had failed to properly reconcile discrepancies within the evidence. Mr Mills acknowledged that the latter two grounds were, essentially, "reasons challenges" though, of course that is not to say that such challenges cannot succeed.
6. There was an oral hearing before the Upper Tribunal which had been convened to explore whether there was an error of law in the judge's determination and to go on to remake the decision in the event of a finding that there was.
7. Mr Mills, in submissions, acknowledged that there had been points in the determination where the judge had identified the correct standard of proof which was, of course, the balance of probabilities. However, her reference to the "lower standard of proof" at paragraph 36 caused sufficient doubt as to whether she had properly applied the correct standard throughout.

Some of her generous findings, from the point of view of the Claimant, might suggest that she had, indeed, been applying the lower standard. As to the other grounds, the evidence before the judge had been “all over the place”. The Claimant herself had sought to rely upon documents which contained different spellings of her name and different dates of birth and she had made a previous application for a visit visa in 2005 relying upon a passport which suggested she had been born in Pakistan. Although the judge had found the oral evidence of one Mr Akbar, who had seen the Claimant from time to time, to be persuasive, the judge’s conclusions bordered on the perverse. When pushed further as to that Mr Mills contended that the conclusions were actually perverse.

8. Ms Rutherford contended that the judge had carefully gone through all of the evidence which had been presented to her. There was nothing apart from the wording in paragraph 36 to suggest that she had applied an incorrect standard of proof. The findings that she had reached had been open to her on the evidence. It had been open to her to accept the evidence of Mr Akbar. There had been no challenge to the authenticity of the birth certificate issued in the UK upon which she had relied and the mere fact that Adalat Khan, named as her father in that certificate, has turned out not to be, does not mean the birth certificate was not properly issued.
9. Mr Mills, responding, acknowledged he was unable to point to anything specific which suggested an incorrect standard of proof had been applied, other than what was said in paragraph 36, but maintained the point that what he regarded as speculative explanations for difficulties with the evidence, advanced by the judge, supported the proposition that she was applying the wrong standard. It was true that the genuineness of the birth certificate relied upon had not been placed in issue but what the Secretary of State was saying was that it had not been shown that the Claimant was the person named in that birth certificate as having been born in Bradford in the UK. The judge had skated over the DNA evidence.
10. I have concluded, for the reasons set out below, that the judge did not err in law and that the determination shall stand.
11. As to the question of the standard of proof, there is no doubt that the requisite standard is that of a balance of probabilities. The judge correctly said that on two occasions in her determination. She did, though, also refer to the “lower standard of proof” prior to setting out her final conclusions. The reference to the lower standard of proof is a reference to what is sometimes referred to as “the real risk test” which is the standard of proof applied in asylum cases and which is accepted as being a less demanding standard than that of a balance of probabilities. So, if a judge did erroneously apply that more generous standard of proof then, unless the facts were such as to mean it could have made no difference, such a judge would err in law.
12. Matters do, in my judgment, though, have to be placed in some context. Judge Hawden-Beal is an experienced judge of the First-tier Tribunal. It is

a very basic principle that in immigration appeals, as distinct from asylum appeals, the burden of proof applicable is that of the balance of probabilities. That is so basic that, ordinarily, one would not expect even a novice judge to make a mistake about it. The determination does, as noted, contain two references to the correct standard of proof so it is not as if the judge has only referred to the lower standard. Although Mr Mills describes some of her findings as being based upon speculation, or as being otherwise generous, I can find nothing in any of the wording she uses, other than the opening words to paragraph 36, as indicating that, as a matter of fact, she did apply the incorrect and more generous standard. In these circumstances, whilst the reference to the lower standard was certainly a mistake, it was, in my judgment, no more than a simple error in the use of words. I am satisfied, taking everything into account, that she correctly applied the balance of probabilities standard throughout and that all of her findings and conclusions were made and reached with that correct burden in mind.

13. As to the remaining arguments, matters such as what findings of fact to make and what weight to attach to particular items of evidence are for the First-tier Tribunal. The Upper Tribunal will not likely interfere. The judge was careful in her approach in that she addressed the various items of documentary evidence before her and considered their potential significance. She recognised that there were shortcomings in the evidence but was reassured by the oral evidence of Mr Akbar. What was suggested as constituting speculation, in my judgment, was no more than explaining why there might be other explanations, aside from dishonesty, for certain anomalies within the documentary evidence. It might have been the case that others would not have been so persuaded by Mr Akbar's evidence which was, essentially, that he had seen the Appellant as a very young child, and then when she was 6, and then when she was 19 and then in later years and he was satisfied that they were all one and the same person. It may be that, viewed from some perspectives, her treatment of the evidence might be thought to be somewhat generous from the Claimant's perspective. Nevertheless, this is not, in my judgment, a case where the high perversity threshold which Mr Mills suggests has been reached, actually has. I can quite see that other judges faced with the same evidence might have reached different conclusions but that, of itself, does not demonstrate arguable error.
14. In the above circumstances, therefore, I conclude that there is no error in the determination of the First-tier Tribunal and that its decision shall stand.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set the decision aside

Anonymity

The First-tier Tribunal did not make an anonymity order. I do not do so.

Signed

Date

Upper Tribunal Judge Hemingway

TO THE APPELLANT
FEE AWARD

I make no fee award.

Signed

Date

Upper Tribunal Judge Hemingway